

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 5110 OF 2022

PALAPARTY ABHISHEK

APPELLANT(S)

VERSUS

BINJUSARIA ISPAT PVT. LTD. & ANR.

RESPONDENT(S)

ORDER

Present Civil Appeal u/s 62(1) of the Insolvency and Bankruptcy Code, 2016 (the “**IBC**”) has been preferred by the Appellant against the final judgement dated 08.07.2022 of the National Company Law Appellate Tribunal (the “**NCLAT**”) affirming the judgement dated 16.11.2021 of the National Company Law Tribunal, Hyderabad Bench – I (the “**NCLT**”) whereby the NCLT admitted the application filed by Respondent No. 1 Operational Creditor u/s 9 of the IBC and initiated Corporate Insolvency Resolution Process (the “**CIRP**”) against M/s Abhirama Steels Limited (the “**Corporate Debtor**”).

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Jayant Kumar Arora
Date: 2024.04.04
10:53:03 IST
Reason: 

The brief factual matrix leading to the present Civil Appeal is that

the Corporate Debtor made an oral purchase order for the purchase of

Mild Steel Billets from Respondent No. 1 and the goods as required were supplied. Against such sale of goods, the Operational Creditor – Respondent No. 1 raised invoices amounting to INR 1,77,15,636. Thereafter, Respondent No. 1 entered into a Memorandum of Understanding on 13.02.2016 (the “**MOU**”) with the Corporate Debtor and the Appellant whereby the Corporate Debtor agreed to repay the amount by 29.02.2016. Under the terms of the MOU, the Corporate Debtor gave 8 post-dated cheques to Respondent No. 1 which might be encashed in case Corporate Debtor was unable to pay the amount in cash. Due to non-payment, Respondent No. 1 presented the post-dated cheques for encashment which were dishonoured. Respondent No. 1 initiated proceedings u/s 138 of the Negotiable Instruments Act, 1881. Thereafter, Respondent No. 1 and the Corporate Debtor both filed civil suit for recovery against each other. The Respondent No. 1 had filed Company Petition No. 186/2016 before the High Court of Telangana seeking winding up, and after the formation of the NCLT, the matter stood transferred in terms of the Notification dated 07.12.2016 of the Ministry of Corporate Affairs, Government of India. Respondent No. 1 issued a demand notice u/s 8 of the IBC to the Corporate Debtor, and thereafter filed an application u/s 9 of the IBC which was admitted by the NCLT *vide* final order and judgement dated

16.11.2021 initiating CIRP against the Corporate Debtor.

After hearing learned counsel for the parties, we have considered the judgment of ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** which is heavily relied upon by the counsel for the appellant to contend that due to pendency of civil suit application u/s 9 of the IBC cannot be admitted. We have gone through the relevant portion of paragraph 51 of the said judgment which is reproduced as thus: -

“.....Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

After going through the same and considering the findings as recorded by the NCLT and NCLAT, we are satisfied that the argument as advanced by the counsel for appellant is of no help to them and the Tribunal has rightly admitted the application filed by the operational creditor for CIRP. Therefore, we are not inclined to interfere in the

order impugned of NCLT and NCLAT.

Accordingly, this appeal stands dismissed. Interim order shall stand vacated. Pending interlocutory application(s), if any, is/are disposed of.

....., **J.**
[J.K. MAHESHWARI]

....., **J.**
[SANJAY KAROL]

New Delhi;
February 26, 2024.

ITEM NO.36

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5110/2022

PALAPARTY ABHISHEK

Appellant(s)

VERSUS

BINJUSARIA ISPAT PVT. LTD. & ANR.

Respondent(s)

(FOR ADMISSION and IA No.108573/2022-STAY APPLICATION)

Date : 26-02-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Mr. Virender Ganda, Sr. Adv.
Mr. Vipul Ganda, Adv.
Mr. Satyajit A Desai, Adv.
Mr. Ayandeb Mitra, Adv.
Mr. Ajay Jain, Adv.
Mr. S. K. Giri, Adv.
Ms. Aastha Bansal, Adv.
Mr. Siddharth Gautam, Adv.
Mr. Abhinav K. Mutyalwar, Adv.
Mr. Gajanan N Tirthkar, Adv.
Mr. Vijay Raj Singh Chouhan, Adv.
Mr. Srijan Jain, Adv.
Ms. Anagha S. Desai, AOR

For Respondent(s) Mr. R. Anand Padmanabhan, Sr. Adv.
Ms. Amritha Sarayoo, Adv.
Ms. Ruchi Arya, Adv.
Ms. Anveshi, Adv.
Mr. Shashi Bhushan Kumar, AOR

Mr. Brijesh Kumar Tamber, AOR
Mr. Vinay Singh Bist, Adv.
Mr. Prateek Kushwaha, Adv.
Mr. Yashu Rustagi, Adv.
Mr. Sahas Bhasim, Adv.

Mr. Rajesh Kumar Gautam, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

The appeal is dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

**(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS**

**(VIRENDER SINGH)
BRANCH OFFICER**

(Signed order is placed on the file)